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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

CITY OF FOSTER CITY, Plaintiff and Respondent, v. ELIZABETH KARNAZES, Defendant and Appellant.	A128542 (San Mateo County Super. Ct. No. CIV 476835)

Elizabeth Karnazes appeals from three orders pertaining to the enforcement of a settlement agreement with the City of Foster City (the City) in which she agreed to bring her residence into compliance with the City's fire, safety, and health codes. We reverse the trial court's order allowing the City to take video and photographs during a compliance inspection of Karnazes's home, and dismiss her other appeals.

I. BACKGROUND

The City initiated this code enforcement action against Karnazes in September 2008, alleging the interior of Karnazes's home and garage contained a large amount of debris and clutter which created health, safety, and fire hazards to the public in violation of the City's public nuisance and fire ordinances. The complaint further alleged Karnazes had refused to allow the fire chief or his designee to inspect the premises despite two inspection warrants issued by the court in June and July 2008. The City sought a preliminary and permanent injunction requiring Karnazes to correct "those conditions which constitute a health, safety and fire hazard; specifically by removal of combustible materials stockpiled in the interior of the premises, including the garage,"

along with other relief. Karnazes, an attorney, represented herself in pro. per. in the action.

In October 2008, the City and Karnazes entered into a settlement agreement, which was subsequently entered as an order of the court in December 2008. Under paragraph No. 5 of the agreement, Karnazes agreed to bring the house into compliance with City ordinances by June 15, 2009, and to permit the City's fire chief or his representative to inspect the interior of the house on or about that date, or at a mutually agreed time before that date, to verify compliance. The agreement provided Karnazes further time to correct any issues identified in the final inspection, and gave the City a right to re-inspect after that time. Referring to the inspection the parties agreed would occur on or before June 15, 2009, paragraph No. 4 of the settlement agreement stated: "No photographs, videos, or other recordings may be made by the [City] or its representative during that inspection." Karnazes insisted on the no-recording language, fearing the photos would be used against her in other litigation in which she was involved and to "hurt [her] in the eyes of the court and of the public."

The settlement agreement further provided in paragraph No. 7 that this case would be stayed by order of the court "until the completion of the inspection, on or about June 15, 2009, or unless either party violates the terms of this agreement."[1] The agreement included the following enforcement language: "If this agreement is violated, either party may move the court for enforcement under [Code of Civil Procedure section] 664.6."[2] [3] If both parties complied with the agreement, the entire action was to be dismissed with prejudice.

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[1] The settlement agreement and stay also encompassed (1) a separate action filed by the City, case No. CIV 463526, concerning the exterior of the house; and (2) a cross-complaint by Karnazes and her son against the City and her next-door neighbors in case No. CIV 463526. Case No. CIV 463526 was apparently dismissed after Karnazes cleaned up her yard.

[2] Code of Civil Procedure section 664.6 provides: "If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may

The City's efforts to schedule an inspection by June 15, 2009, or at any later time in 2009, proved to be futile. By letter of June 3, 2009, Karnazes unilaterally granted herself a 60-day extension of the June 15 inspection date. Throughout the rest of the year, Karnazes continued to offer excuses and seek extensions. On December 3 and 4, 2009, Karnazes left telephone messages with the City's counsel requesting the City send someone to conduct a "pre-inspection" during the week of December 7, 2009, and tell her what needed to be done for her home to comply with the settlement agreement.[4] When the City agreed to send the fire chief on December 10 for a pre-inspection as she had requested, Karnazes said the pre-inspection could not be done before December 14. When the City tried to schedule the pre-inspection on December 16, Karnazes advised she was leaving town on the 15th for the holidays and would send correspondence with available dates in January. She failed to do so. Two more scheduled pre-inspections were postponed by Karnazes in February and March 2010. Finally, the parties scheduled a pre-inspection for March 25, 2010, and Karnazes agreed to schedule the final inspection for May 5, 2010 at 4:00 p.m. Although Karnazes attempted to postpone the March 25 pre-inspection at the last minute, the City declined.

The City fire chief inspected Karnazes's home on March 25, and sent Karnazes a letter on April 2, 2010, detailing the work she needed to do to comply with the settlement agreement. The chief advised Karnazes: "[T]he amount of materials stored in your home constitutes a fire hazard, potential structural hazard and safety hazard." He reported observing piles of boxes, clothes, and other items filling all major rooms of the house as well as the garage. Piles in some rooms reached more than 10 feet in height. Some

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enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement."

[3] All further statutory references are to the Code of Civil Procedure.

[4] This was to be an informal inspection to assist Karnazes in determining what work needed to be done to get the house in compliance with the codes. This is distinct from the compliance inspection required by the settlement agreement, which had been scheduled for June 15, 2009, but had still not yet occurred.

rooms were completely inaccessible due to the debris, while other areas were accessible only through narrow paths or by climbing over boxes and bags filled with clothing and other items. The letter explained: "The amount of combustible materials, packed so tightly into the majority of the rooms of the home and the garage, if ignited would result in an extremely hot, fast-spreading fire that would be extremely difficult to suppress." According to the fire chief, responding firefighters would have a difficult time accessing the home to fight such a fire and the combustible materials within would pose a danger to them as well as to neighboring homes. Karnazes denied her house was in violation of any laws.

On March 19, 2010, Karnazes served notice as her own attorney that she would be unavailable from March 30 through April 25, and from June 6 through June 27. On April 29, the City brought an ex parte application to amend the settlement agreement to allow photographing and videotaping of the May 5 inspection or, in the alternative, for an order shortening time for the court to hear such a motion. On May 4, following an ex parte hearing on the application, the court vacated the May 5 inspection so it could be rescheduled after the date set for hearing the City's motion to amend, which it set for May 17. A written order granting the application was filed on May 5.

Karnazes addressed the court at length at the May 17 hearing, objecting to having to respond to the City's motion on shortened time and expressing opposition to the City photographing or videotaping the interior of her house. Karnazes also vehemently opposed any attempt to schedule a final inspection to occur before she left on the trip planned for June 6 to June 27. She stated in relevant part: "If you do that, your honor, then you might as well burn the house down . . . . There is no way in the world I could do whatever [the fire chief] wants in this . . . outrageously picky and inappropriate letter by June 1st. I couldn't even come close to cleaning out my entire house . . . [¶] . . . [¶] [An inspection] would fail. What is the point?" She asked the court to postpone the inspection until the end of the summer "before the rainy season starts again," and reiterated the house would certainly "flunk" the fire chief's requirements if the inspection went forward before she left town.

Following the hearing, the court deemed the City's motion to be a motion to enforce the settlement agreement under section 664.6, and ordered (1) the final inspection of Karnazes's home go forward on May 19, 2010 at 4:00 p.m.; (2) the City be permitted to photograph and videotape the May 19 inspection; (3) the fire chief file and serve a letter by the morning of May 21, detailing what steps Karnazes needed to take, if any, to bring her home into compliance with the settlement agreement; and (4) the parties return for a hearing on the afternoon of May 21. On May 18, Karnazes filed a notice of appeal from both the order on the City's motion to enforce the settlement agreement and the earlier order shortening time entered on May 5.[5]

No inspection took place on May 19. Fire department employees who attempted to inspect Karnazes's home on that date found padlocks on the gates to the entrance of her home and a "No Trespassing" note posted on the gate. The parties returned to court on June 1 for a further hearing on the motion to enforce the settlement agreement. Following that hearing, the court found Karnazes had not permitted a final inspection as required by the settlement agreement to determine whether her home had been brought into compliance with law and her compliance therefore remained unestablished. The court (1) ruled Karnazes's appeal stayed only enforcement of the May 20 order and nothing more, (2) ordered the stay agreed to as part of the settlement agreement lifted, and (3) permitted the City to proceed to trial of the action and established procedures for the setting of a trial date. A written order reflecting these rulings was entered on June 4, 2010.

Karnazes filed an amended notice of appeal on June 11, 2010, purporting to appeal from the orders of May 5, May 18, May 20, June 1, and June 4, 2010 or, in the alternative, to seek writ relief from such orders. The orders addressed in her opening

[5] The enforcement order was identified in the notice of appeal as having been entered on May 18, but the written order after hearing was not in fact entered until May 20. We will deem this notice of appeal to be from the May 5 and May 20 orders. (Cal. Rules of Court, rule 8.100(a)(2).)

brief were those entered on May 5, May 20, and June 4, and we deem her appeal to be from those orders. (Cal. Rules of Court, rule 8.100(a)(2).)

II. DISCUSSION

A. *The May 5 and May 20 Orders*

Karnazes ventures no specific argument as to either the appealability or merits of the May 5 order shortening time. We therefore dismiss the purported appeal from that order as abandoned. (*Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th 1350, 1361, fn. 5.) That appeal is moot in any event due to our partial reversal of the May 20 order.

Karnazes contends the May 20 order is appealable as the final determination of a collateral issue—whether the settlement agreement authorized the City to take videos and photographs of the interior of her home during its final inspection. We agree. "The only exception to the [rule that appealability must be based on statute] is if the judgment or order relates to a final determination of some *collateral matter* distinct and severable from the general subject of the litigation, and if such determination requires the aggrieved party . . . to pay money, or requires the performance . . . of an act by or against such party." (*Draus v. Alfred M. Lewis, Inc.* (1968) 261 Cal.App.2d 485, 489.) Thus, an interim order is appealable under the collateral order doctrine if "1. The order is collateral to the subject matter of the litigation, [¶] 2. The order is final as to the collateral matter, and [¶] 3. The order directs the payment of money by the appellant or the performance of an act by or against appellant." (*Marsh v. Mountain Zephyr, Inc.* (1996) 43 Cal.App.4th 289, 297–298.)

Here, the question of whether the settlement agreement allowed the final inspection to be photographed and videotaped was collateral to the principal subject matter of the litigation—the enforcement of Karnazes's agreement to bring her home into compliance with the applicable codes. The order was final as to the question of photographing and videotaping the final inspection. And the order directed the

performance of an act—the photographing and videotaping—that was against her will. We therefore find the May 20 order was appealable.[6]

On the merits, Karnazes argues the order constituted an unauthorized amendment of her judicially approved settlement agreement. We agree. Paragraph No. 4 of the agreement specified: "No photographs, videos, or other recordings may be made by [the City] during that inspection." In context, the words "that inspection" plainly refer to the final inspection contemplated by the settlement agreement. Although that inspection did not occur by or near the 2009 date contemplated in the settlement agreement, the City's 2010 motion to amend the settlement agreement expressly sought a court order setting a date for "the final inspection" and allowing it to be recorded. The notice of motion makes it clear the City was referring to the final inspection contemplated in the settlement agreement. By styling its motion as a motion to *amend* rather than simply *enforce* the settlement agreement, the City tacitly acknowledged it was seeking relief inconsistent with paragraph No. 4 of that agreement.

We note the City's brief on appeal offers no defense on the merits of the trial court's May 20 order. Although we find no error in the court's establishment of a date for the final inspection to go forward or in the follow-up inspection report it ordered, we do find the court erred in authorizing the City to create a photographic and videotape record of the inspection. That authorization was contrary to paragraph No. 4 of the agreement. We emphasize our decision is based solely on the parties' settlement agreement. The parties have no agreement precluding the photographing or videotaping of any inspection other than the final inspection contemplated by paragraphs Nos. 4 and 5 of the December 2008 settlement agreement and order.

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[6] The fact the order in issue is one enforcing a settlement agreement is significant to our determination it is "final" for purposes of the collateral order doctrine. We express no opinion as to whether a future order authorizing the recording of an inspection would be appealable if it was not based on the interpretation of a settlement agreement incorporated into a court order akin in substance and effect to a final judgment. (See *Southern Pacific Co. v. Oppenheimer* (1960) 54 Cal.2d 784, 785–786.)

B. *The June 4 Order*

Karnazes contends the trial court lacked jurisdiction to enter the June 4 order under the automatic stay provisions of section 916. We do not reach that issue. We find the June 4 order was not appealable and we decline to exercise our discretion to treat the appeal as a writ.

In our view, the June 4 order lifting the stay and authorizing the City to proceed to trial was not appealable. It is not one of the orders made appealable by section 904.1, and it does not come within the collateral order doctrine because it was not a final determination of any issue, but a mere prelude to further proceedings, either a trial or other steps to enforce the settlement agreement. (*Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 656 [collateral order is not final or appealable if it is preliminary to later proceedings]; see also *Concerned Citizens Coalition of Stockton v. City of Stockton* (2005) 128 Cal.App.4th 70, 80–81[order requiring further proceedings was not appealable because it likely would have been followed either by reinstatement of the original judgment or entry of a new judgment].) In addition, the June 4 order does not come within the collateral order doctrine because it did not direct the payment of money by Karnazes or the performance of an act by or against her. (*Marsh v. Mountain Zephyr, Inc.*, *supra*, 43 Cal.App.4th at pp. 297–298.) Accordingly, the June 4 order was not appealable.

Although we have discretion to treat Karnazes's appeal from the June 4 order as a petition for a writ of mandate, we decline to do so. Karnazes identifies no unusual circumstances warranting the exercise of such discretion. (*H. D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1366–1367.)

III. DISPOSITION

The purported appeals from the May 5, 2010 and June 4, 2010 orders are dismissed. The portion of the May 20, 2010 order allowing the City to photograph and videotape the May 19 final inspection is reversed. In all other respects, the May 20 order is affirmed.

Each side shall bear its own costs.

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Margulies, Acting P.J.

We concur:

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Dondero, J.

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Banke, J.